

REMARKS

Claims 2 to 6, 8 to 21, 23 to 26 are pending.

Claims 23, 24 and 26 have been rejected under 35 USC 101 as allegedly being directed to functional descriptive material or “data structures” not claimed as embodied in computer readable media. Applicant respectfully disagrees. As claimed, independent claims 23 and 26 are directed to computing devices.

Computing devices no doubt fall within the purview of a “process machine manufacture or composition of matter” as allowed by the expansive language of 35 USC 101. Limitations found after the preamble of claims 21 and 26 describe the nature of the computing device claimed and thus not directed to a functional descriptive material or “data structures” *per se*. Instead, the limitations are claimed as descriptors of otherwise statutory subject matter.

This is specifically contemplated by MPEP and the Examiner’s attention is drawn to MPEP 2106.01:

“Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical “things”...

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that the computer program is included in the claim...

Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description of expression, is it descriptive material *per se* and hence nonstatutory.” [EMPHASIS ADDED]

As such, neither MPEP, the case law or 35 USC 101 requires the presence of a computer readable media as suggested by the Examiner in the Office Action. Instead, an otherwise statutory manufacture or machine (e.g. a computing device) combined with stored computer executable instructions, as claimed in claims 23, 24 and 26 clearly meets the requirements of 35 USC 101. Withdrawal of the rejection under 35 USC 101 of claims 23, 24 and 26 is respectfully requested.

The Examiner also continues to reject pending claims 2 to 6, 8 to 21, 25 under 35 USC 102 as clearly anticipated by U.S. Patent No. 6,473,114 to Strubbe.

Applicant again respectfully disagrees with this assertion. As detailed in the previous Office Action, Strubbe discloses methods of allowing conference participants to enter/leave a conference. Strubbe does not disclose or suggest emphasizing activity of an already active participant in a conference, as claimed.

The Examiner relies on column 4, lines 7 to 19 and rejecting all of claims 2 to 6, 8 to 21 and 25. These portions of Strubbe read as follows:

Referring now to FIG. 6, a candidate speaker appears on the display at D1 when the candidate speaks momentarily as shown in frame 141. If the candidate speaker D1 continues to speak, the candidate continues to grow as shown in frame 142. If the candidate speaker D1 stops speaking, his/her image shrinks and disappears. If the candidate speaker continues speaking beyond a predefined interval, the candidate speaker image D1 grows to the size of the other speakers A, B, and C and the animation sequence of FIG. 2, beginning at frame 144 is performed. Thus, the candidate now pushes the old speaker B out of the frame as illustrated in frames 144-146. [EMPHASIS ADDED]

Clearly what is being described in the relied-upon passage is candidate D1 of Strubbe joining the conference. Specifically, as candidate D1 joins, his/her image appears and continues to grow. If the candidate speaker D1 stops speaking, his/her image shrinks and disappears. By

stark contrast, as claimed in the present application (see for example claim 25), a method includes displaying a plurality of video images and... “continuing to display all of said plurality of video images”... and “as said one of said conference participants becomes less active in said conference, said video image representing said one of said conference participants becomes less prominent amongst said plurality of video images on said display”. What Strubbe discloses, however, is a simple animation: the shrinking and disappearance of an image representing a candidate who has not yet fully joined a conference and stops speaking, as he/she is joining a conference. There is simply no disclosure or suggestion in Strubbe of continuing to display candidate D1’s video image, and as D1 becomes less active in the conference, making D1’s video image becoming less prominent, as claimed in the present application. As such, it is respectfully submitted that Strubbe simply fails to disclose all of the limitations of claims 25 and 26 and therefore cannot anticipate this claim, nor claims dependent thereon.

Applicant further notes that Strubbe also fails to disclose many of the limitations of dependent claims 2 to 6, and 8 to 21. For example, Strubbe fails to disclose presenting audio associated with the video image at a volume that varies in dependence on the level of activity, as claimed in claim 3 of the present application. Strubbe similarly fails to disclose highlighting the video image with a color indicating level of activity, as claimed 7; or receiving metrics indicative of levels of activity of the multiple conference participants, as claimed 8; or extracting the metric of activity from a received stream of data prior to decoding video images, as claimed in claim 10; and so on.

Accordingly, Strubbe cannot form a basis for a proper rejection of the dependent claims under 35 USC 102. As noted in the previous Office Action response, a proper rejection under 35 USC 102 requires,

The identical invention must be shown in as complete detail as is contained in the ...

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claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (The elements must be arranged as required by the claim), but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

The identical invention, as claimed, is simply not disclosed by Strubbe. Accordingly, the Examiner is respectfully requested to withdraw the rejections of dependent claims 2-21 in view of Strubbe, or clearly identify those portions of Strubbe that disclose the subject matter, as claimed in these claims.


No new matter has been added by the above amendments.

In view of the foregoing, favorable reconsideration of the application is earnestly solicited.

Respectfully submitted,

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